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6 Scott J. Ferrell
7 Michael Campos
Thomas Hess
Sara Jordan

8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF NEVADA

11 METABOLIC RESEARCH, INC., a Nevada)
12 Corporation,)

Case No.: 09-cv-02453-JCM-PAL

13)
14 Plaintiff,)

vs.)

DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES

15 SCOTT J. FERRELL, MICHAEL CAMPOS,)
16 THOMAS HESS, SARA JORDAN, DOES I-)
V, inclusive, DOE ENTITIES VI-X, inclusive,)

Complaint Filed: November 16, 2009

17 Defendants.)
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1 Defendants Scott Ferrell, Michael Campos, Thomas Hess and Sara Jordan (hereinafter
2 collectively “defendants”) now answer the Complaint against them, and deny any and all such
3 allegations, and further admit or deny the specific allegations of the Complaint and state
4 affirmative defenses, as follows:

5 **ANSWER**

6 **PRELIMINARY STATEMENT**

7 1. Defendants lack knowledge or information sufficient to form a belief as to the
8 truth or falsity of the allegations contained in paragraph 1 of the complaint and on that basis
9 denies such allegations.

10 2. Defendants lack knowledge or information sufficient to form a belief as to the
11 truth or falsity of the allegations contained in paragraph 2 of the complaint and on that basis
12 denies such allegations.

13 3. Admitted that Plaintiffs have filed a complaint against Defendants under NRS
14 §207.470 seeking treble damages. Except as expressly admitted, Defendants deny each and every
15 allegation contained in paragraph 3 of the complaint.

16 4. Admitted that Defendant Scott Ferrell is an attorney in the state of California.
17 Except as expressly admitted, Defendants deny each and every allegation contained in paragraph
18 4 of the complaint.

19 5. Defendants deny each and every allegation contained in paragraph 5.

20 6. Defendants deny each and every allegation contained in paragraph 6.

21 **THE PARTIES**

22 7. Admitted for jurisdictional purposes only.

23 8. Defendant Scott Ferrell admits that he is a citizen and resident of Newport Beach,
24 California. Admitted that Scott Ferrell authored a letter dated October 20, 2009. Except as
25 expressly admitted, Defendants deny each and every allegation contained in paragraph 8.

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1 9. Admitted that Defendant Michael Campos is a citizen and resident of the State of
2 California. Except as expressly admitted, Defendants deny each and every allegation contained
3 in paragraph 9.

4 10. Defendant Thomas Hess is a citizen and resident of the State of California. Except
5 as expressly admitted, Defendants deny each and every allegation contained in paragraph 10.

6 11. Defendant Sara Johnson is a citizen and resident of the State of California. Except
7 as expressly admitted, Defendants deny each and every allegation contained in paragraph 11.

8 12. Defendants lack sufficient knowledge or information sufficient to form a belief as
9 to the truth or falsity of the allegations contained in paragraph 12 of the complaint and on that
10 basis deny such allegations.

11 **JURISDICTION AND VENUE**

12 13. Defendants deny each and every allegation contained in paragraph 13 of the
13 complaint and on that basis deny such allegations.

14 14. Defendants deny each and every allegation contained in paragraph 14 of the
15 complaint and on that basis deny such allegations.

16 **FACTUAL ALLEGATIONS**

17 **A. Plaintiff Metabolic Research**

18 15. Defendants lack sufficient knowledge or information sufficient to form a belief as
19 to the truth or falsity of the allegations contained in paragraph 15 of the complaint and on that
20 basis deny such allegations.

21 16. Defendants lack sufficient knowledge or information sufficient to form a belief as
22 to the truth or falsity of the allegations contained in paragraph 16 of the complaint and on that
23 basis deny such allegations.

24 17. Defendants lack sufficient knowledge or information sufficient to form a belief as
25 to the truth or falsity of the allegations contained in paragraph 17 of the complaint and on that
26 basis deny such allegations.

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1 18. Defendants lack sufficient knowledge or information sufficient to form a belief as
2 to the truth or falsity of the allegations contained in paragraph 18 of the complaint and on that
3 basis deny such allegations.

4 19. Defendants lack sufficient knowledge or information sufficient to form a belief as
5 to the truth or falsity of the allegations contained in paragraph 19 of the complaint and on that
6 basis deny such allegations.

7 20. Defendants lack sufficient knowledge or information sufficient to form a belief as
8 to the truth or falsity of the allegations contained in paragraph 20 of the complaint and on that
9 basis deny such allegations.

10 21. Defendants lack sufficient knowledge or information sufficient to form a belief as
11 to the truth or falsity of the allegations contained in paragraph 21 of the complaint and on that
12 basis deny such allegations.

13 22. Defendants lack sufficient knowledge or information sufficient to form a belief as
14 to the truth or falsity of the allegations contained in paragraph 22 of the complaint and on that
15 basis deny such allegations.

16 23. Defendants lack sufficient knowledge or information sufficient to form a belief as
17 to the truth or falsity of the allegations contained in paragraph 23 of the complaint and on that
18 basis deny such allegations.

19 **B. “The Extortion Letters”**

20 24. Defendants admit that a letter was mailed to Plaintiff on or about October 20,
21 2009 in accordance with the notice requirement set forth in Cal. Civil Code § 1782 as a
22 prerequisite for bringing an action under California’s Consumer Legal Remedies Act (“CLRA”),
23 Cal. Civil Code § 1750 *et seq.* (hereafter “CLRA notice letter”).

24 25. Defendants admit that the quoted text was included in their CLRA notice letter to
25 Plaintiff. Except as expressly admitted, Defendants deny each and every allegation contained in
26 paragraph 25 of the complaint.

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27. Defendants lack sufficient knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 27 of the complaint and on that basis deny such allegations.

29. Defendants deny each and every allegation contained in paragraph 29 of the complaint.

30. Defendants deny each and every allegation contained in paragraph 30 of the complaint.

31. Defendants deny each and every allegation contained in paragraph 31 of the complaint.

RACKETEERING

33. Defendants state that the allegations of paragraph 33 of the Complaint are legal conclusions to which no response is required; to the extent a response is required, admitted.

34. Defendants state that the allegations of paragraph 34 of the Complaint are legal conclusions to which no response is required; to the extent a response is required, admitted.

1 35. Defendants state that the allegations of paragraph 35 of the Complaint are legal
2 conclusions to which no response is required; to the extent a response is required, admitted.

3 36. Defendants state that the allegations of paragraph 36 of the Complaint are legal
4 conclusions to which no response is required; to the extent a response is required, admitted.

5 37. Defendants state that the allegations of paragraph 37 of the Complaint are legal
6 conclusions to which no response is required; to the extent a response is required, admitted.

7 38. Defendants state that the allegations of paragraph 38 of the Complaint are legal
8 conclusions to which no response is required; to the extent a response is required, admitted.

9 39. Defendants state that the allegations of paragraph 39 of the Complaint are legal
10 conclusions to which no response is required; to the extent a response is required, admitted.

11 40. Defendants deny each and every allegation contained in paragraph 40 of the
12 complaint.

13 41. Defendants deny each and every allegation contained in paragraph 41 of the
14 complaint.

15 42. Defendants deny each and every allegation contained in paragraph 42 of the
16 complaint.

17 43. Defendants deny each and every allegation contained in paragraph 43 of the
18 complaint.

19 44. Defendants deny each and every allegation contained in paragraph 44 of the
20 complaint.

21 45. Defendants deny each and every allegation contained in paragraph 45 of the
22 complaint.

23 46. Defendants deny each and every allegation contained in paragraph 46 of the
24 complaint.

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1 CLAIM TWO

2 RACKETEERING CONSPIRACY

3 47. Answering paragraph 47 of the complaint, Defendants incorporate by reference
4 their responses to paragraphs 1 through 46.

5 48. Defendants deny each and every allegation contained in paragraph 48 of the
6 complaint.

7 49. Defendants deny each and every allegation contained in paragraph 49 of the
8 complaint.

9 50. Defendants deny each and every allegation contained in paragraph 50 of the
10 complaint.

11 CLAIM THREE

12 CIVIL EXTORTION

13 51. Answering paragraph 51 of the complaint, Defendants incorporate by reference
14 their responses to paragraphs 1 through 50.

15 52. Defendants deny each and every allegation contained in paragraph 52 of the
16 complaint.

17 53. Defendants deny each and every allegation contained in paragraph 53 of the
18 complaint.

19 54. Defendants deny each and every allegation contained in paragraph 54 of the
20 complaint.

21 55. Defendants deny each and every allegation contained in paragraph 55 of the
22 complaint.

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1 **CLAIM FOUR**

2 **TORTIOUS INTERFERENCE WITH CONTRACTS AND PROSPECTIVE**
3 **ECONOMIC RELATIONS**

4 56. Answering paragraph 56 of the complaint, Defendants incorporate by reference
5 their responses to paragraphs 1 through 55.

6 57. Defendants lack sufficient knowledge or information sufficient to form a belief as
7 to the truth or falsity of the allegations contained in paragraph 57 of the complaint and on that
8 basis deny such allegations.

9 58. Defendants deny each and every allegation contained in paragraph 58 of the
10 complaint.

11 59. Defendants deny each and every allegation contained in paragraph 59 of the
12 complaint.

13 60. Defendants deny each and every allegation contained in paragraph 60 of the
14 complaint.

15 61. Defendants deny each and every allegation contained in paragraph 61 of the
16 complaint.

17 62. Defendants deny each and every allegation contained in paragraph 62 of the
18 complaint.

19 63. Defendants deny each and every allegation contained in paragraph 63 of the
20 complaint.

21 **CLAIM FIVE (Erroneously labeled "Claim Six" in the Complaint)**

22 **DECLARATORY RELIEF**

23 64. Answering paragraph 64 of the complaint, Defendants incorporate by reference
24 their responses to paragraphs 1 through 63.

25 65. Defendants deny each and every allegation contained in paragraph 65 of the
26 complaint.

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1 66. Defendants state that the allegations of paragraph 66 of the Complaint are legal
2 conclusions to which no response is required; to the extent a response is required, admitted.

3 67. Defendants lack sufficient knowledge or information sufficient to form a belief as
4 to the truth or falsity of the allegations contained in paragraph 67 of the complaint and on that
5 basis deny such allegations.

6 68. Defendants lack sufficient knowledge or information sufficient to form a belief as
7 to the truth or falsity of the allegations contained in paragraph 68 of the complaint and on that
8 basis deny such allegations.

9 69. Defendants deny each and every allegation contained in paragraph 69 of the
10 complaint.

11 **CLAIM SIX (Erroneously Labeled "Claim Seven" in the Complaint)**

12 **PUNITIVE DAMAGES**

13 70. Answering paragraph 70 of the complaint, Defendants incorporate by reference
14 their responses to paragraphs 1 through 69.

15 71. Defendants deny each and every allegation contained in paragraph 71 of the
16 complaint.

17 72. Defendants lack sufficient knowledge or information sufficient to form a belief as
18 to the truth or falsity of the allegations contained in paragraph 72 of the complaint and on that
19 basis deny such allegations.

20 73. Defendants deny each and every allegation contained in paragraph 73 of the
21 complaint.

22 **WHEREFORE**, as set forth further below, Defendants pray that Plaintiff take nothing on
23 its complaint and that judgment be entered in favor of Defendants.

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1 **AFFIRMATIVE DEFENSES**

2 Defendants hereby assert the following affirmative defenses:

3 **First Affirmative Defense**

4 (SLAPP Violation)

5 Each of the purported causes of action brought by Plaintiff arises from Defendant's good
6 faith communication in furtherance of their right to petition pursuant to California's Consumer
7 Legal Remedies Act, and thus the suit represents a Strategic Lawsuit Against Public Participation
8 under Nev. Rev. Stat. Ann. § 41.635, et seq. and California Code of Civil Procedure §425.16.

9 **Second Affirmative Defense**

10 (Failure to State a Claim)

11 Each of the purported causes of action set forth in the complaint fails to allege facts
12 sufficient to state a claim upon which a claim for relief can be granted.

13 **Third Affirmative Defense**

14 (Unclean Hands)

15 Each of the purported causes of action is barred by the doctrine of unclean hands.

16 **Fourth Affirmative Defense**

17 (First Amendment Privilege)

18 Each of the purported causes of action arises from Defendants' privileged exercise of
19 their right to petition guaranteed by the First Amendment of the United States Constitution.

20 **Fifth Affirmative Defense**

21 (Estoppel)

22 Each of the purported causes of action set forth in the complaint is barred by the doctrine
23 of estoppel.

24 **Sixth Affirmative Defense**

25 (No Injury)

26 Plaintiffs were not injured or damaged as a result of any action, omission or conduct by
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Defendants.

Seventh Affirmative Defense

(Laches)

Each of the purported causes of action is barred by the doctrine of laches.

Eighth Affirmative Defense

(Imposition of Punitive Damages)

Permitting recovery of punitive or exemplary damages in this case would contravene Defendants' constitutional rights as reserved by the Fifth, Seventh, Eighth, and Fourteenth Amendments to the United States Constitution, other provisions of the United States Constitution, and applicable state law.

Ninth Affirmative Defense

(Punitive Damages Unavailable)

No act or omission of Defendants was malicious, willful, wanton, or with actual malice, fraud or oppression as required to support an award of punitive damages. Defendants also specifically incorporate by reference any and all standards or limitations regarding the determination and enforceability of punitive or exemplary damages awards under California or Nevada law, including California Civil Code sections 3294 and 3295.

Tenth Affirmative Defense

The Complaint is barred by the provisions of California Civil Code §1782 and should be dismissed forthwith pursuant to the immunity that Defendants enjoy under the terms of that statute.

Eleventh Affirmative Defense

Any statements or petitions made by Defendants are protected by an absolute and/or qualified privilege.

Twelfth Affirmative Defense

Defendants are entitled to an award of compensation, attorney's fees, and punitive damages in the event that they prevails on a motion to dismiss this action pursuant to the terms of Nev. Rev.

1 Stat. Ann. § 41.635, et seq. and California Code of Civil Procedure §425.16.

2 **Thirteenth Affirmative Defense**

3 Any and all claims made against Defendants in the Complaint must fail as Defendants did not
4 act with intent or malice.

5 **Fourteenth Affirmative Defense**

6 (Litigation Privilege)

7 Any statements or petitions made by Defendants are protected by the litigation privilege
8 enumerated in California Civil Code 47(b), and in the common law.

9 **Fifteenth Affirmative Defense**

10 (No Entitlement to Prejudgment Interest)

11 Any claim to prejudgment interest is barred as to any purported cause of action for which
12 relief is not available.

13 **Sixteenth Affirmative Defense**

14 Defendants allege that this action has been commenced in a county which is not proper
15 for venue in that the defendant has no connection with this District and the subject of the claim
16 did not arise in this District. Defendants request that the court transfer the action to the District
17 Court of California, Central District, the county in which the claim arose.

18 **Seventeenth Affirmative Defense**

19 Defendants allege that the court lacks jurisdiction over the person of the defendants for
20 the reason that defendants, and each of them, is a resident of California and is not subject to
21 jurisdiction in Nevada.

22 **Eighteenth Affirmative Defense**

23 Defendants have not completed their investigation and discovery regarding the
24 allegations and claims asserted by Plaintiff. Accordingly, Defendants reserve the right to assert
25 such additional affirmative defenses as necessary based on such ongoing investigation and
26 discovery.

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1 WHEREFORE, Defendants pray for judgment against Plaintiff as follows:

- 2 1. Denying Plaintiff any relief against Defendants, whether declaratory,
3 injunctive or otherwise;
4 2. That the complaint be dismissed with prejudice;
5 3. For costs of suit incurred herein, including reasonable attorneys' fees; and
6 4. That Defendants have such other further relief as the Court deems proper.
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9 Dated: January 5, 2010

SPRINGEL & FINK LLP

10 By: 

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